

WRITTEN DETERMINATIONS

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PURPOSE

This manual provides guidance to the procurement officer when preparing determinations required by statute and regulation throughout the solicitation, award, and contract administration processes.

When the statutes or regulations require a determination by the procurement officer, chief procurement officer, commissioner of administration or commissioner of transportation & public facilities, a written determination must be prepared. Depending on the determination called for and the specific delegation of authority provided to the person preparing the determination, either a recommendation requiring a higher approval or the final determination must be prepared by the procurement officer.

The listed determinations must be reviewed for every procurement action, and the required determinations shall be made. In the event that additional information is needed by the procurement officer, they should consult the statute and the regulation referenced. If circumstances warrant an alternate format, you may use an alternate approach provided it meets the minimum requirements of statute and regulation.

GENERAL WRITTEN DETERMINATIONS

EMERGENCY RESPONSE

Approval: Procurement Officer
Form: Memo to Procurement File
Reference: AS 36.30.310 / 2 AAC 12.450
Applies To: Emergency Procurements

A written determination is required if there is not sufficient time for the chief procurement officer to make the determination per AS 36.30.310 (generally, if action needs to be taken within 72 hours). The procurement must be made in accordance with 2 AAC 12.450. If practical, approval by the head of the agency must be obtained before an emergency procurement of \$50,000 or more is made. A record of each agency emergency determination, including a copy of the determination, the procurement document, and a Procurement Report (Form 02-115), must be prepared and forwarded to the Division of Shared Services within 5 days of completion of the procurement.

REQUESTS FOR ALTERNATE PROCUREMENTS (RAPs) LESS THAN \$100,000

Approval: Head of Agency
Form: RAP (Form 02-100)
Reference: AS 36.30.300, 305, 320 / 2 AAC 12.410 - 430

A written determination is required to approve RAP's in amounts which do not exceed the statutory limit for Small Procurements for:

- a) Single Source procurements for supplies, services, and professional services, in accordance with AS 36.30.300, 2 AAC 12.410-420 and the Administrative Manual.
- b) Limited Competition procurements for supplies, services, and professional services, in accordance with AS 36.30.305, 2 AAC 12.430 and the Administrative Manual.

This approval authority may not be sub-delegated below the level of deputy commissioner, assistant commissioner, or director of administrative services.

REQUESTS FOR ALTERNATE PROCUREMENTS (RAPs) MORE THAN \$100,000

Approval: Chief Procurement Officer
Form: RAP (Form 02-100)
Reference: AS 36.30.040, 300, 305, 308, 310 / 2 AAC 12.410, 430, 440, 575

A written determination is required prior to making a single source, or limited competition procurement above \$100,000, an innovative procurement, or an emergency procurement if sufficient time exists.

EXCEPTION TO THE UNANTICIPATED AMENDMENT LIMITATION

Approval: Chief Procurement Officer
Form: RAP (02-100)
Reference: 2 AAC 12.485

A written determination is required to exceed the contract amendment limitation of the lesser of 20% of the current contract term value or \$100,000. The determination must address the legitimacy of the amendment, whether the additional work is within the scope of the original contract, whether the contract contains clauses allowing modification, and whether the amendment represents a change that alters the main purpose of the original contract or constitutes a new undertaking.

COMPETITIVE SEALED PROPOSAL

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.200 / 2 AAC 12.215

A written determination is required prior to using a competitive sealed proposal instead of a competitive sealed bid.

STATE EMPLOYMENT PROGRAMS

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.311 / 2 AAC 12.050

A written determination is required before procuring supplies or services from state employment programs or youth education and employment programs.

CONTRACT TRANSFER/ASSIGNMENT

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040 / 2 AAC 12.480

A written determination is required before a contract or subcontract is transferred or otherwise assigned.

MULTIPLE AWARD CONTRACTS

Approval: Procurement Officer
Form: Memo to File
Reference: 2 AAC 12.920

A written determination is required before a solicitation is issued for multiple contracts. 2 AAC 12.920 MULTIPLE AWARD, says that multiple awards may be made if award to two or more offerors of similar products is required for the state to get adequate delivery, service, or product compatibility. The solicitation must specify how the multiple contracts will be utilized by the state.

Multiple awards may not be made:

- a) if a single award will meet the state's needs without sacrificing economy or service,
- b) based on the product preference of a user when that preference is not related to the utility or economy of the product, or
- c) for the sole purpose of dividing the procurement among certain vendors.

DETERMINATIONS REQUIRED PRIOR TO SOLICITATION ISSUANCE

OUT-OF-STATE SOLICITATION

Approval: Chief Procurement Officer
Form: Memo Approved by the Chief procurement officer
Reference: AS 36.30.130 / AAM 81.090

A written determination is required in order to provide public notice outside Alaska. When providing public notice of a solicitation, advertisements may be placed only in newspapers or media intended to reach prospective Alaskan offerors. However, if an out-of-state vendor requests a copy of the Request for Proposal (RFP) during the solicitation, the procurement officer must provide one.

Situations may arise that make it impracticable to solicit only from Alaskan offerors. The chief procurement officer will consider exceptions to this requirement if the procurement officer demonstrates that it is impracticable to solicit competition from Alaskan vendors only.

BRAND NAME SPECIFICATIONS

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, 060 / 2 AAC 12.100

A written determination is required to limit the procurement of items to a specific manufacturer's name or catalog numbers.

EXCLUSION OF PROSPECTIVE CONTRACTOR

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, 050 / 2 AAC 12.020

A written determination is required to exclude a prospective contractor from submitting a proposal.

QUALIFIED PRODUCTS LIST

Approval: Chief Procurement Officer or Commissioner of Transportation & Public Facilities
Form: Memo Approved by Chief Procurement Officer / Commissioner of Transportation & Public Facilities
Reference: AS 36.30.040, 060 / 2 AAC 12.110

A written determination is required to develop a qualified products list if testing or examination of the supplies or construction items, before issuance of the solicitation, is desirable or necessary in order to satisfy state requirements.

MULTI-STEP SOLICITATIONS

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.190, 265

A written determination is required prior to soliciting multi-step bids or proposals.

MULTI-TERM / MULTI-YEAR CONTRACTS

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.390

A written determination is required before using a multi-term or multi-year contract.

CIRCULATION FOR LESS THAN 21 DAYS

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, .130

A written determination is required to limit RFP circulation period to less than 21 calendar days.

PERFORMANCE/PAYMENT BONDS

Approval: Chief Procurement Officer or Head of the Purchasing Agency
Form: Memo Approved by the Chief Procurement Officer / Head of the Purchasing Agency
Reference: 2 AAC 12.810

A written determination is required to include a performance or payment bond into a RFP. The procurement officer shall establish a need for the bond. The amount shall be calculated to cover the risk to the state based on the cost of the premium price to obtain performance after a default.

MODIFICATIONS TO BOILERPLATE STANDARD TERMS & CONDITIONS

Approval: Attorney General's Office
Form: Memo
Reference: AS 36.30.460

A written determination is required to vary the clauses adopted under AS 36.30.430 (boilerplate, standard contract clauses) for inclusion in a particular state contract (Ref. AS 36.30.460). **Form:** Memo approved by AG's Office

EXCLUSION OF LOCAL FOREST, AGRICULTURAL, AND FISHERIES PRODUCT PREFERENCES

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.15.010, 050

A written determination is required to exclude local forest products and local agricultural and fisheries product preferences from a solicitation.

DELIVERY OUTSIDE OF ALASKA

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.331

A written determination is required to use a point of delivery outside the State of Alaska.

LIQUIDATED DAMAGES

Approval: Procurement Officer
Form: Memo to File
Reference: 2 AAC 12.475

A written determination is required to include a liquidated damages clause in a solicitation. The procurement officer shall establish a need for the liquidated damages clause. The amount shall be calculated to cover actual damages that may be incurred by the state.

EXCLUSION OF ALASKA BUSINESS LICENSE/PREFERENCES WHEN IN CONFLICT WITH FEDERAL FUNDING

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, 890 / 2 AAC 12.730

A written determination is required to exclude the Alaska business license requirement; the Alaska bidder preference; or the Alaska product preference, from a procurement where federal assistance or money is involved and there is a conflict between a provision of this chapter and a federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement.

DETERMINATIONS REQUIRED DURING CIRCULATION

AMENDMENTS

- Approval: Procurement Officer
- Form: Memo to File
- Reference: AS 36.30.040, 350 / 2 AAC 12.850

A written determination is required to amend a solicitation, even if the amendment only extends the deadline.

CORRECTION OR WITHDRAWAL OF BIDS / PROPOSALS

- Approval: Procurement Officer
- Form: Memo to File
- Reference: AS 36.30.040, 160 / 2 AAC 12.140, 230

A written determination is required to permit the correction or withdrawal of a bid / proposal.

CANCELLATION BEFORE DEADLINE

- Approval: Procurement Officer
- Form: Memo to File
- Reference: AS 36.30.040, 350 / 2 AAC 12.850

A written determination is required to cancel a solicitation in whole or in part before the deadline, even if the amendment only cancels one item.

DETERMINATIONS REQUIRED AFTER OPENING / DEADLINE

REJECTION OF A PROSPECTIVE CONTRACTOR'S BID / PROPOSAL

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040 / 2 AAC 12.020

A written determination is required to reject a prospective contractor's proposal if they assisted in drafting the Request for Proposal or gained substantial information regarding the RFP.

CORRECTION OR WITHDRAWAL OF BIDS / PROPOSALS; CANCELLATION OF AWARDS

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, 160 / 2 AAC 12.160, 170, 250

A written determination is required to permit the correction or withdrawal of a bid / proposal, or to cancel an award of contract based on a mistake.

NON-RESPONSIBLE BIDDER / OFFEROR

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, 360 / 2 AAC 12.500

A written determination is required to determine that the prospective contractor is not a responsible offeror.

AWARD WHEN THERE IS ONLY ONE RESPONSIVE BIDDER / OFFEROR

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.040, 350 / 2 AAC 12.190

When only one responsive bid or proposal is received, award may be made to the single bidder or offeror upon written determination.

REJECTION OF ALL BIDS / PROPOSALS, CANCELLATION AFTER DEADLINE

Approval: Chief Procurement Officer or Head of Purchasing Agency
Form: Memo Approved by Chief Procurement Officer / Head of Purchasing Agency
Reference: AS 36.30.040, 350 / 2 AAC 12.860

A written determination is required to reject all bids or proposals in whole or in part or to cancel all, or a portion, of a solicitation. This determination is not required when all the bids or proposals are nonresponsive. It is only required when bids or proposals are rejected for one of the reasons listed in the determination.

SECURITY

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.120

A written determination is required when the solicitation requires security. The procurement officer shall reject a bid or proposal that does not comply with the security requirement unless, in accordance with regulations, the procurement officer determines that the bid or proposal fails to comply in a non-substantial manner with the security requirements.

CONFIDENTIALITY

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.230

A written determination is required to determine confidentiality and proprietary aspects of a proposal.

ADDITIONAL DISCUSSIONS

Approval: Chief Procurement Officer or Head of Purchasing Agency
Form: Memo Approved by Chief Procurement Officer / Head of Purchasing Agency
Reference: AS 36.30.240 / 2 AAC 12.290

A written determination is required to conduct additional discussions or change the requirements and require a second submission of best and final proposals.

NON-RESIDENT PROPOSAL EVALUATION COMMITTEE MEMBER

Approval: Commissioner of the Department of Administration
Form: Memo through Chief Procurement Officer to Commissioner of Administration
Reference: AAM 81.470

A written determination is required to include a non-resident of the state of Alaska, other than State of Alaska government employees or officials, in a voting capacity on a Proposal Evaluation Committee (PEC).

DETERMINATIONS REQUIRED WHEN A PROTEST IS FILED

NOTICE OF PROTEST

Approval: Procurement Officer
Form: Letter to Interested Parties
Reference: AS 36.30.570

The procurement officer shall immediately give notice of a protest to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

STAY OF AWARD

Approval: Procurement Officer
Form: Memo to File
Reference: AS 36.30.575

The award may be made unless the procurement officer determines in writing that a reasonable probability exists that the protest will be sustained or the stay of award is not contrary to the best interests of the state.

DECISION BY THE PROCUREMENT OFFICER

Approval: Procurement Officer
Form: Letter to Protestor
Reference: AS 36.30.580

The procurement officer shall issue a written decision containing the basis of their decision within 15 calendar days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

EXTENSION OF TIME

Approval: Commissioner of Administration or Commissioner of Transportation & Public Facilities
Form: Memo Approved by the Commissioner of Administration / Transportation & Public Facilities
Reference: AS 36.30.580

The time for the decision may be extended up to 30 calendar days for good cause by the commissioner of administration or the commissioner of transportation & public facilities, as applicable. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.

NOTICE OF APPEAL

Approval: Procurement Officer
Form: Letter to Interested Parties
Reference: AS 36.30.595 / 2 AAC 12.990

The procurement officer shall immediately give notice of an appeal filed under AS 36.30.590 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

PROTEST REPORT

Approval: Procurement Officer
Form: Memo to the Commissioner of Administration
Reference: AS 36.30.605

When a protest appeal is filed, the procurement officer shall prepare and submit to the commissioner of administration a complete report regarding the protest and decision. The procurement officer shall submit this report within ten calendar days of the date the protest appeal is filed. A copy of the report is to be sent to the protester and to all offerors that have requested a copy of the appeal under AS 36.30.595(b).

Within 15 calendar days after receipt of an appellant's comments, the commissioner of administration shall notify the appellant of the acceptance or rejection of the appeal and if rejected, the reason for rejection.

DECISION BY THE COMMISSIONER OF ADMINISTRATION

Approval: Commissioner of Administration
Form: Letter to Interested Parties
Reference: AS 36.30.680

The decision by the Commissioner shall be sent within 20 calendar days after the hearing to all parties by personal service or certified mail.

DETERMINATIONS REQUIRED IN THE EVENT OF A CONTRACT CONTROVERSY

PROCUREMENT OFFICER DECISION

Approval: Procurement Officer
Form: Letter to Contractor
Reference: AS 36.30.620

If a contract controversy asserted by a contractor cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision within ninety (90) calendar days after receipt of all necessary information from the contractor.

This time period may be extended for good cause by the commissioner of administration or the commissioner of transportation & public facilities. The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. If the controversy is not resolved through this decision, the matter shall be immediately referred to the commissioner.

COMMISSIONER OF ADMINISTRATION DECISION

Approval: Commissioner of Administration
Form: Letter to Interested Parties
Reference: AS 36.30.680

The decision by the commissioner shall be sent within 20 calendar days after the hearing to all parties by personal service or certified mail.